IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1067 OF 2007

Uday R. Joshi ....Petitioner
V/s
Joint Charity Commissioner, Kolhapur & Ors..... .....Respondents.

Ms.Gauri Jadhav, Adv. For the petitioner.

Mr.R.M.Patne, AGP for respondent No.1.

Mr.Amit Borkar, Adv. For the respondent No.2.

CORAM: A.P.DESHPANDE, J.
6/9/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of both the parties.

This petition is filed by the Hanuman Education Society through its trustees calling in question the legality and validity of an order passed by the Joint Charity Commissioner, Kolhapur dated 8.1.07 rejecting the application moved by the petitioner seeking permission to sell the subject property under section 36 of the Bombay Public Trusts Act (the "Act"). The case of the petitioner is that the subject plot was purchased by the Trust with a view to construct a school building as the Trust was running a school in a tenanted premises. However according to the petitioner after purchase of the plot the same came to be reserved for commercial complex and hence it is not possible for the petitioner to use the property for the purpose for which it was purchased. In view of this changed circumstance the petitioner moved an application seeking permission of the Charity Commissioner under section 36 of the act to sell the property. The permission was refused earlier on the ground that there

was no genuine and pressing need for the petitioner to sell the property so also on the ground that the value at which the petitioner proposes to sell the property is less than fair market price. Within hardly after a period of one month from the rejection of earlier application the petitioner yet again moved another application with a view to sell the suit property to one Ameya Developers who had agreed to pay only a sum of Rs.5000/- more than what was the consideration agreed in the earlier application. The rejection of this application by the impugned order has given rise to the present writ petition. The learned counsel for the petitioner has contended that the Joint Charity Commissioner has not considered the application moved by the petitioner in its proper perspective in as much as the property in question is not capable of being used by the present petitioner for the purpose for which the same was purchased viz. construction of school building on account of the plot being reserved exclusively for commercial complex. The next submission is that though the principle of res judicata is not applicable to the proceedings initiated under section 36 of the act the Joint Charity Commissioner has mainly gone by the observations made in the earlier order that there was no need for the petitioner to dispose of the property. It is submitted that the material that was placed on record of the Joint Charity Commissioner indicating the reservation of the land for commercial complex has not been considered. It is also tried to be demonstrated that as per the valuation report the value of the property is Rs.2,25,000/- and the offer of respondent No.2 is Rs.2,30,000/-. The order passed by the Joint Charity Commissioner reveals that a certificate issued by the Sub-Registrar indicates the value of the property to be Rs.5,63,535/- and hence in the opinion of the Joint Charity Commissioner the property was undervalued at Rs.2,30,000/- which is below market price. At this stage learned counsel for the petitioner

suggests that the matter could be remanded back to the Joint Charity Commissioner for reconsideration of the request made by the petitioner-Trust for sale of the property. Learned counsel for the respondent No.2 shows his willingness to raise the offer. This exercise in my view can be conveniently undertaken by the Joint Charity Commissioner after reappreciating the stand of the petitioner in regard to need for disposal of the property in view of its reservation for the purpose other than one for which the property was purchased by the petitioner. In this view of the matter the impugned order is quashed and set aside. Writ petition is partly allowed. Matter is remanded to the Joint Charity Commissioner for fresh hearing in the light of observations made in this order. It shall be open for the Joint Charity Commissioner to issue public notice in regard to sale of property in widely circulated newspapers in the area wherein the property is located at the costs of the petitioner and seek appropriate offers from the prospective purchasers by inviting tenders. It is made clear that respondent No.2 shall also be entitled to raise his offer and/or submit his tender after the Joint Charity Commissioner issues public notice for sale of property. If this course is adopted the same would indicate the market value of the property and would facilitate the Joint Charity Commissioner to permit sale of the property at the market value. Rule made absolute in above terms. Parties to act on authenticated copy of this order.

6.9.07